

2005 Annual Report to the Legislature

Pesticide Investigations and Enforcement

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Legislative Mandate

As stated in RCW 15.58.420 and RCW 17.21.350, the Washington State Department of Agriculture (WSDA) is to report annually to the appropriate committees of the House of Representatives and the Senate on its activities under Chapter 15.58 RCW, the Washington Pesticide Control Act, and Chapter 17.21 RCW, the Washington Pesticide Application Act. The report is to include (1) a review of the department's pesticide incident investigation and enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed; and (2) a summary of the pesticide residue food monitoring program with information on food sample testing, a listing of the pesticides for which testing is done, and other pertinent information.

This report presents information only on the department's pesticide incident investigation and enforcement activities. Previously, WSDA participated in the pesticide residue food monitoring program carried out by the U.S. Food and Drug Administration (FDA). FDA discontinued its agreement with WSDA in 2001. The results of FDA's pesticide residue food monitoring program can be found on the FDA Web site at: <http://www.cfsan.fda.gov/~dms/pesrpts.html>.

Pesticide Investigations and Enforcement

The Washington State Department of Agriculture, under authorities granted by Chapter 15.58 RCW, the Washington Pesticide Control Act and Chapter 17.21 RCW, the Washington Pesticide Application Act, protects the environment and the physical and economic health and welfare of the citizens of the state. As provided in these statutes, WSDA regulates the sale and use of all pesticides in Washington state.

Among other activities, this involves the registration of more than 11,000 pesticide products, the licensing of approximately 25,000 pesticide applicators, dealers and consultants, and the investigation of complaints of pesticide misuse. WSDA coordinates activities closely with other Washington state agencies, federal agencies and citizens of the state.

Complaint Investigations

In 2005, WSDA investigated 192 complaints involving pesticide use, sales, and distribution; pesticide licensing; and building inspections for wood-destroying organisms. Table 1 provides the number of complaints (cases) investigated and resulting number of violations for the past three years.

Table 1. Total Complaints and Violations, 2003-2005

Year	Total Complaints	Total Violations
2003	222	127
2004	200	107
2005	192	86*

* Based upon cases completed to date.

WSDA is required to respond to cases of human exposure within one working day of receipt. In 2005, a total of 39 human exposure complaints were received compared to 50 human exposure complaints in 2004. All 39 human exposure complaints were responded to within one working day. All but one of the other cases were responded to within two working days.

Complaints that resulted in violations involved primarily three types of activity in 2005: pest control operator/wood destroying organism inspections (PCO/WDO), commercial/industrial, and agricultural. This is summarized in Table 2.

Table 2. Type of Activity Involved in Complaint Resulting in Violations, 2003-2005

Type of Activity	2003	2004	2005
Agricultural	31	30	21
Commercial/Industrial	44	29	15
PCO/WDO	36	33	30
Residential (non-commercial)	8	4	13
Right-of Way	8	11	7
Total Violations	127	107	86*

*Based upon cases completed to date.

The top counties where complaints originated include: Spokane 22, King 21, Chelan 18, Grant 16, Yakima 12, Douglas 11, and Pierce 10. Table 3 provides a complete listing of complaints by county for the past three years.

Table 3. Complaints by County, 2003-2005

County	2003	2004	2005
Adams	4	5	6
Asotin	1	0	1
Benton	13	16	8
Chelan	12	8	18
Clallam	2	3	1
Clark	11	5	6
Columbia	0	1	1
Cowlitz	1	0	3
Douglas	8	2	11
Ferry	0	0	1
Franklin	7	5	7
Garfield	0	1	0
Grant	19	19	16
Grays Harbor	1	6	2
Island	0	3	1
Jefferson	0	1	0
King	23	28	21
Kitsap	4	4	2
Kittitas	1	1	2
Klickitat	3	2	2

County	2003	2004	2005
Lewis	6	2	2
Lincoln	5	4	4
Mason	1	0	3
Okanogan	5	5	2
Pacific	0	0	0
Pend Oreille	1	0	1
Pierce	21	10	10
San Juan	0	0	1
Skagit	4	4	6
Skamania	0	0	0
Snohomish	4	10	5
Spokane	19	18	22
Stevens	4	1	0
Thurston	16	7	5
Wahkiakum	0	0	0
Walla Walla	6	11	5
Whatcom	3	1	1
Whitman	6	2	4
Yakima	11	15	12
Totals	222	200	192

Formal and Non-Formal Enforcement Actions

WSDA can take a range of actions on determination of a violation. **Only the Notice of Intent (NOI) is a formal enforcement action** under the Administrative Procedures Act (RCW 34.05). A NOI is a formal enforcement document stating the department's intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violator's pesticide license.

WSDA also takes **non-formal enforcement actions**. These include:

- A verbal warning, administered verbally by a field investigator to an alleged infractor, which specifies the violative act.
- An advisory letter, which provides specific written advice to an alleged infractor on how to comply with the laws and rules related to pesticides.
- A Notice of Correction (NOC), which is a written document issued to an alleged infractor when a minor violation of the laws and rules related to pesticides has occurred. The NOC identifies the specific law and/or rule that was violated, information on how to correct the violation, and a time by which the violation must be corrected.

Penalties: Under WSDA's pesticide violation penalty matrix, the maximum penalty WSDA may assign is \$7,500 per violation and/or 90 days license suspension or license denial or revocation. The typical penalty for a non-serious, first-time violation is \$200 to \$500 and a license suspension of two to six days; however, a first-time violation would, in most cases, result in the administration of a NOC and not advance to the civil penalty stage until a repeat violation was identified.

The typical penalty for a first-time human exposure violation is \$350 to \$550 and a license suspension of five to nine days; however, actual case results, which reflect multiple violations and/or aggravating circumstances, have resulted in fines averaging \$1,000. In first-time human exposure cases, WSDA may proceed directly to civil penalty without first issuing an NOC. WSDA may also refer appropriate cases to EPA for criminal prosecution or civil action. Table 4 summarizes the formal and non-formal enforcement actions completed in the last three years.

Please note: The complaints in a given year do not directly correlate with the enforcement actions in that year. Enforcement action is often completed in the year after the complaint is received, due to when the complaint is received and the complexity of the investigation. Also, some complaints result in action being taken against more than one individual. For information on enforcement action taken on a specific complaint, see the appropriate annual report of the Pesticide Incident Reporting and Tracking (PIRT) Review Panel, prepared by the Department of Health as required by RCW 70.104.090.

Table 4. Enforcement Actions Completed, 2003-2005

Action Completed	2003	2004	2005
<i>Formal Enforcement Action</i>			
Actions resulting from Notices of Intent (NOI)	33	30*	24**
License Suspension (days)	294	942	78
Civil penalties assessed	\$28,350	\$13,460	\$13,240
<i>Non-Formal Enforcement Action</i>			
Notices of Correction (NOC) issued	147	134	90

*Includes 3 NOIs to deny license. ** Includes one settlement in which the violator purchased drift reduction equipment instead of paying a \$1,600 civil penalty.

To the extent possible, WSDA tries to work with individuals to correct violative acts by issuing an NOC. In the last three years, WSDA has issued two to four times more NOCs than NOIs. A NOC is not considered a formal enforcement action under RCW 43.05.100 (2). Other actions, such as a verbal warning or advisory letter, are not tracked, but are part of a case investigation file.